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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Seventh Notice of Proposed Rulemaking	))))))	MM Docket 92-266

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COMMENTS OF VIACOM INTERNATIONAL INC.

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To: The Commission

COMMENTS OF VIACOM INTERNATIONAL INC.

Viacom International Inc. ("Viacom"), by its attorneys, hereby submits these comments in response to the Commission's Seventh Notice of Proposed Rulemaking in the above-captioned proceeding.[1] The Notice suggests that already-carried program services should be denied even the current 7.5 percent operator mark-up on increased license fee support at a time when the Commission has granted new services a significantly enhanced 20-cent operator mark-up.[2] Appropriately framed this way, the policy inconsistency and marketplace inequity of this proposal is readily apparent.

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[1] Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 (Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking) in MM Docket No. 92-266, FCC 94-286 (rel. Nov. 18, 1994) ("Going-Forward Order," "Order," or "Notice").

[2] The Notice also seeks comment on the related issue of whether operators electing to use the original 7.5 percent mark-up for new channel additions should still be allowed a 7.5 percent mark-up on license fee increases.

As an operator of both established and emerging program services,[3] Viacom is keenly aware of the disparate impact of the Commission's Going-Forward Order on competitors in the programming marketplace. Viacom thus submits these comments, first, to address the fundamental misapprehension upon which the Notice appears to be based -- that mark-ups on programming cost increases serve no significant policy purpose -- and, second, to urge that the Commission not exacerbate, but rather rectify,[4] the striking disparity in cable operator investment incentives it has already created.

I. THE NOTICE FUNDAMENTALLY MISCONCEIVES BOTH HOW LICENSE FEE INCREASES ARISE AND THE VITAL ROLE SUCH OPERATOR INVESTMENT PLAYS IN THE ABILITY OF A PROGRAM SERVICE TO ATTRACT AND SERVE VIEWERS

The Notice's proposal to eliminate the 7.5 percent mark-up on license fee increases appears to be based upon the fundamental misconceptions that (1) already-carried

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[3] Viacom's broad perspective reflects the fact that it owns and operates advertiser-supported networks that span the spectrum from well-established services enjoying wide distribution (e.g., Nickelodeon/Nick at Nite and MTV: Music Television) to others that are still starting up (e.g., MTV Latino and All News Channel). A complete listing of Viacom's program interests is contained in its earlier comments in this docket, dated June 29, 1994, at 2.

[4] The Order failed to act on, or even acknowledge, the strong public interest arguments presented in the record for comparable enhancement of the incentive for operators to support already-carried program services. See, e.g., Comments of Viacom International Inc. (filed June 29, 1994) at 6-10.

programmers can increase license fees to operators at will and (2) no discernible consumer benefit results from this increased operator support for existing services. These premises simply do not square with the realities of the marketplace.

The traditional struggle for advertiser-supported program services to expand and improve programming begins with the hard-fought pursuit of increased license fees. Well before the advent of rate regulation, programmers operating in the highly competitive cable programming arena battled to attract increased operator contributions to the substantial and steadily rising costs of producing desirable programming. Under rate regulation, of course, operators have become even more reluctant to agree to license fee increases that -- marked up just 7.5 percent -- would erode their already narrowed profit margin on regulated tiers. Elimination of this 7.5 percent mark-up will only further stiffen operators' resistance to expanding their support for existing services.

Yet the increased financial support of cable operators is critical to programmers' ability to improve their services. Improved program fare allows programmers to gain critical market share and thereby earn increased advertising revenue -- which ultimately reduces the need for large license fee increases. A program service developed under this traditional economic model, but subsequently impeded by regulation in attracting expanded operator support, suffers a severe handicap in its effort to distinguish itself and flourish in the marketplace.

The Notice's apparent premise that license fee increases serve no compelling policy purpose is thus unfounded. Rather, programmers have enlisted operators' license fee support to deliver to cable subscribers not just new program services, but also more original, quality programming on existing services.

That support will not be forthcoming, however, if regulated cable operators are not offered a direct financial incentive to provide it. The FCC concluded as much in adopting the new 20-cent incentive for added program services, finding that the promise of increased penetration alone is generally insufficient to encourage rate regulated cable operators to invest in new programming. The same is true for investment in programming fare existing services can offer: FCC regulations must afford operators a marginal incentive to provide their critical support.

II. ELIMINATING OPERATOR INCENTIVES TO INVEST IN ALREADY-CARRIED PROGRAM SERVICES, AFTER ENHANCING THEIR INCENTIVES TO INVEST IN ADDITIONAL PROGRAM SERVICES, WOULD WIDEN EXISTING DISPARITIES AND UNDERMINE PROGRAMMING QUALITY

The Commission has already determined that the incentives for operator investment in programming under the initial "going forward" rules were insufficient to foster the continued growth of the programming marketplace. However, the Going-Forward Order significantly increased investment incentives only for additional services, providing no such enhancement for already-carried program services. The Notice's proposal to deny operators any return on investment in already-carried program services would create an even more drastic disparity between new and existing program services in the competition for limited operator programming support.

The Order has already created an unjustifiable competitive advantage for newly-added program services over those that are already carried. An operator faced with the choice of investing a limited amount in either an additional program service or the expansion efforts of an already-carried service will almost certainly choose the new service: the operator is guaranteed a return of 20 cents, as opposed to the fraction of a penny return on support for the existing service.

The already substantial magnitude of this comparative disadvantage for existing services would only be exacerbated if the Commission eliminated the mark-up on license fee increases. In absolute terms, as well, a license fee increase would present operators with an unappealing economic proposition. Without any mark-up, such cost increases would only serve to create maximum erosion in whatever profit margin the operator has preserved under benchmark regulation.[5]

Thus, programmers who relied on the traditional economic model[6] -- providing service for no or minimal license fees at the outset, and then expanding their original programming at ever-increasing expense with the expectancy of reasonable license fee growth -- would be unfairly penalized.[7] Again,

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[5] As the Commission has previously acknowledged, to remain in business cable operators must be able to charge rates that not only cover their costs, but also provide for a profit. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, 9 FCC Rcd 1164 at ¶ 13 (1993).

[6] In contrast, program services launched under the new going-forward rules, while subject to caps on license fees over the next two years, would have the benefit of the initial 20-cent incentives and the ability to tailor their business plans to the new regulations from the start.

[7] Given the transitional nature of the going-forward rules, the Commission has recognized that such rules should accommodate the reliance and reasonable expectations of affected parties. See Letter to Peter H. Feinberg from Chief, Cable Services Bureau, DA94-1508, released December 23, 1994 (granting blanket waiver of going-forward rules because some operators may have relied on then-existing going-forward rules in deciding to add program services prior to May 15, 1994).

Indeed, Viacom urges that the Commission clarify this waiver, which allows operators to raise rates under the initial rules after December 31, 1994 for channels added by that date, and then adjust rates under the new going-forward rules for channels added after that date. Specifically, Viacom requests that the Commission clarify that services added between May 15, 1994 and December 31, 1994 pursuant to the blanket waiver -- and thus marked-up 7.5 percent -- will qualify for the same mark-up on subsequent license fee increases.

the viewing public would pay the ultimate penalty in loss of programming quality.

III. THE COMMISSION SHOULD RECTIFY THE COMPETITIVE DISPARITY IN THE PROGRAMMING MARKETPLACE BY ENHANCING -- RATHER THAN ELIMINATING -- OPERATORS' RETURN ON INVESTMENT IN ALREADY-CARRIED SERVICES

Given the disparity in the programming marketplace created by the Going-Forward Order, Viacom believes that the public interest would be best served by a comparably enhanced mark-up for operator investment in already-carried services. This approach would begin to harmonize the Commission's newly-created regulatory model for the launch and growth of program services with the model long-tested by the marketplace.

Furthermore, an enhanced mark-up would promote the public interest with no risk of significant harm to consumers. The FCC's concern that the 7.5% mark-up may provide an incentive for operators to continue carriage of a service that they otherwise might drop is unjustified. Operators will surely not cling to a modest mark-up if they believe unpopular or poor quality program services are jeopardizing customer satisfaction and thus penetration. The Commission's concern overlooks the variety of factors that bear on an operator's decision to carry a given program service, the most important of which is viewer interest. Moreover, because mark-ups on license fee increases are typically modest, they would not substantially affect subscriber rates in any event.

Even if the Commission declines to provide a fair incentive comparable to that for adding services,[8] Viacom urges that the FCC at a minimum maintain the existing mark-up for already-carried program services. While not sufficient to restore the marketplace incentives for increased operator investment in already-carried services, retention of the existing mark-up would serve the public interest by not further widening the competitive disparity between newly-added and already-carried program services.

IV. CONCLUSION

For the foregoing reasons, Viacom respectfully urges the Commission to reject the Notice's proposal to eliminate cable operator returns on license fee increases of already-carried program services. Denying this incentive is contrary to the public interest in promoting competition among cable programmers -- free of regulatory favoritism -- in the production of superior programming. Only by increasing, rather than eliminating, the incentives for operator

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[8] In earlier filed comments in this proceeding, Viacom proposed an enhanced mark-up on license fee increases that is based on the average percentage margin embedded in each system's regulated tier under its applicable benchmark rates. See Comments of Viacom International Inc. (filed June 29, 1994) at 8.

investment in already-carried program services will the FCC rekindle operator support for existing services' continued development of programming highly valued by the American viewing public.

Respectfully submitted,

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